
OLR Bill Analysis

sHB 5575

AN ACT CONCERNING PROMOTION OF THE COMMERCIAL USE OF THE STATE'S DEEP WATER PORTS.

SUMMARY:

This bill creates the Connecticut Port Authority (authority) as a quasi-public agency to coordinate development of state ports. The authority must:

1. coordinate port development, focusing on private and public investments,
2. pursue state and federal funding for dredging and other infrastructure improvements to increase movement of cargo through the ports,
3. market the ports' advantages to domestic and foreign shippers,
4. coordinate the planning and funding of capital projects promoting the ports' development, and
5. develop strategic entrepreneurial initiatives that may be available to the state.

The state's three deep-water ports are in Bridgeport, New Haven, and New London. Currently, local port authorities plan, develop, and manage these ports (see BACKGROUND). A state maritime office in the Department of Transportation (DOT) is responsible for maritime operations, including operating the state pier in New London, serves as the governor's principal maritime policy advisor, and staffs the Connecticut Maritime Commission. This commission advises the governor and legislature on state maritime policy and operations and supports development of the ports.

The bill eliminates the Maritime Commission. It requires the

authority, instead of the commission, to recommend harbor improvement projects to the DOT commissioner (§§ 9-10 and 14).

It creates an Office of Maritime Development in the Department of Economic and Community Development (DECD) to promote and coordinate authority operations with other state agencies. The office, which is in DECD for administrative purposes only, must eventually terminate, moving its functions and those of DOT and the Maritime Commission to the authority.

It exempts from the (1) petroleum products gross earnings tax, certain fuels used in ships primarily engaged in interstate commerce and (2) state motor vehicle fuels tax, fuel used by ships (a) primarily engaged in interstate commerce or (b) displacing more than 4,000 deadweight tons.

EFFECTIVE DATE: July 1, 2016, except for the (1) creation of the Office of Maritime Development, which is effective July 1, 2014, and (2) fuel tax exemptions, which are effective upon passage.

§§ 1, 2, & 5-8 — PORT AUTHORITY AS A QUASI-PUBLIC AGENCY

Under the bill, the authority is a body politic and corporate, a public instrumentality and political subdivision of the state, created to perform an essential public and governmental function. It is a quasi-public agency, not a state department, institution, or agency, and as such is subject to statutory procedural, operating, and reporting requirements for quasi-public agencies, including lobbying restrictions and an ethics code.

Under the bill, the authority may:

1. have perpetual succession and adopt bylaws;
2. adopt and modify an official seal;
3. hire assistants, agents, and other employees to carry out its purposes;
4. obtain insurance against liability or loss in connection with its

property and other assets in amounts and from insurers as it deems desirable, and procure insurance for employees;

5. account for and audit authority funds and those of any recipients of authority funds; and
6. invest in, acquire, lease, purchase, own, manage, hold, and dispose of real property, including state pier real property under its control, and lease, convey, deal in, or enter into agreements with respect to the property on any terms necessary or incidental to carry out its purpose. Such transactions are not subject to approval, review, or regulation by any state agency, except that the authority cannot convey fee simple ownership (full ownership) in land under its jurisdiction and control without the approval of the State Properties Review Board and attorney general.

(Although the bill authorizes the authority to manage and dispose of state pier real property under its control, it does not explicitly transfer control of the state pier from DOT to the authority.)

Powers, Duties, and Responsibilities

In achieving its purposes, the authority has specific power to:

1. develop an organizational and management structure to best achieve its goals;
2. create a code of conduct for board members consistent with applicable law;
3. adopt rules, which are not considered regulations and therefore do not have to go through the regulatory approval process, to conduct its business;
4. receive and accept aid or contributions from any source of money, property, labor, or other things of value, to be held, used, and applied to carry out authority purposes, subject to the conditions of the grant or contribution, including gifts or grants

- from any federal or state department, agency, or instrumentality;
5. enter into agreements with any federal or state department, agency, office, or instrumentality, including the state treasurer's office;
 6. borrow money or secure credit on a temporary, short-term, interim, or long-term basis;
 7. issue bonds, bond anticipation notes, and other obligations, fund and refund them, provide for the rights of their holders, and secure them by pledging revenue, notes, and mortgages of others;
 8. employ, among others, a marketing manager experienced in (a) port market development and promotion and (b) working with vessel operators, railroads, and the shipping and trucking industries;
 9. set employee compensation, except for those subject to collective bargaining agreements;
 10. engage consultants and other independent professionals needed to carry out the authority's purposes and to provide technical assistance;
 11. maintain one or more offices;
 12. sue and be sued in its own name;
 13. mortgage its property to benefit the authority's bondholders;
 14. make and enter into contracts and agreements needed or incidental to its duties and powers, including granting leasehold interests, concession, access, and development rights and privileges, and supplier, vendor, contractor, and consultant contracts; and
 15. do all things necessary or convenient to carry out its purposes under the bill and the law.

§§ 1-4 — BOARD OF DIRECTORS

The authority is governed by a 10-member board of directors, seven of whom are appointed, voting members, and three of whom serve ex-officio. The governor appoints all voting members who are initially serve staggered terms. Three members serve for two years and four serve for four years. One of the four-year members must live in Bridgeport, New Haven, or New London. Successor members are appointed by the governor to serve a four-year term, starting on July 1 in the year of their appointment. The seven appointees must have business and management experience and include people with experience or expertise in at least one of the following areas: (1) international trade, (2) marine transportation, (3) finance, or (4) economic development. The energy and environmental protection (DEEP), DOT, and DECD commissioners serve as nonvoting, ex-officio members.

Four directors constitute a quorum for the transaction of any business or exercise of any power. The board may act by a majority of the directors present at any meeting at which there is a quorum. The board may delegate to four or more directors necessary and proper powers and duties under the bill and the board's by-laws.

Appointed board members cannot designate someone to perform their duties for them. An appointed director who fails to attend three consecutive meetings or half of all meetings held in a calendar year is deemed to have resigned from the board. Any vacancy that occurs other than by the expiration of a term is filled in the same way as the original appointment for the remainder of the term.

Reimbursement and Conflicts of Interest

Each director is entitled to be reimbursed for actual and necessary expenses incurred performing his or her duties. Directors may be privately employed, or in a profession or business, subject to state and federal ethics and conflict of interest laws, rules, and regulations. However, regardless of the law, it is not a conflict of interest for a trustee, director, partner, or officer of any person, firm, or corporation, or any person with a financial interest in such a person, firm, or

corporation, to serve as a director, provided he or she abstains from deliberating, acting, or voting on a matter concerning the person, firm, or corporation.

Removal of Board Members

The appointing authority may remove a board member for inefficiency, neglect of duty, or misconduct in office. Before doing so, the appointing authority must give the director a copy of the charges against him or her and an opportunity for a hearing, no earlier than 10 days after notice, where the director may respond personally or through an attorney. When a director is removed, the appointing authority must file with the secretary of the state a complete statement of the charges against the director and the appointing authority's findings on the charges, along with a complete record of the proceedings.

Board Officers

The governor appoints the board chairperson, who must serve a four-year term. The board elects a vice-chairperson and other officers from its members. Vacancies among officers must be filled within 30 days in the same way as the original selection. The board must establish by-laws to govern its procedures, and appoint committees and advisory boards it finds convenient or necessary to conduct its business.

The initial board members may begin serving immediately on appointment, but cannot serve beyond the sixth Wednesday of the next regular legislative session, unless confirmed by the legislature according to law. All subsequent appointments must be made with legislative advice and consent according to law.

Board Procedures

The board must adopt written procedures to:

1. adopt an annual budget and plan of operations and require board approval before either can take effect;
2. hire, dismiss, promote, and pay authority employees, and

require board approval before a position may be created or a vacancy filled;

3. develop an affirmative action policy;
4. acquire real and personal property and personal services, and require board approval for any non-budgeted expenditure of more than \$ 5,000;
5. contract for financial, legal, or other professional services, and require the authority to solicit proposals for these services at least once every three years;
6. award loans, grants, and other financial assistance, including developing eligibility criteria and an application process, and determining the role played by authority staff and directors; and
7. use surplus funds as authorized by the bill or law.

The authority continues as long as it has bonds or other outstanding obligations and until it is legally terminated. Upon its termination, all the authority's rights and properties pass to and become vested in the state.

Executive Director

The board must appoint an executive director as the authority's chief administrative officer. The executive director (1) is exempt from classified service and receives compensation set by the board, (2) serves at its pleasure, and (3) cannot be a board member. He or she must have extensive experience in developing and managing multi-use port operations.

The executive director directs and supervises administrative affairs and technical activities at the board's direction. He or she must approve all salaries, allowable expenses for the authority and its employees and consultants, and incidental authority expenses.

The executive director must attend all board meetings; keep a record of authority proceedings; and maintain and have custody of all

books, documents, and papers filed with the authority, and the authority's minutes or journal and its official seal. He or she may have copies made of the minutes and records, and may use the authority's official seal to certify them as true copies on which people may rely. The executive director must perform other duties as the board directs.

Reporting Requirements

The board must report annually, by December 15, on its (1) activities, (2) operating and financial statements, and (3) legislative recommendations to the governor and Commerce, Environment, and Transportation committees.

It must submit to the Appropriations, Commerce, Environment, and Transportation committees a copy of each authority audit conducted by an independent auditing firm no later than seven days after receiving it.

§ 13 — OFFICE OF MARITIME DEVELOPMENT

The bill creates an Office of Maritime Development (office) within DECD for administrative purposes only (see BACKGROUND). The office must promote and coordinate authority operations in consultation with DOT and DEEP.

The governor, within available appropriations, and in consultation with DECD, DOT, and DEEP, must appoint an office executive director to manage its daily activities and duties. The office director must have experience in (1) the development and management of multi-use port operations, (2) international trade, (3) maritime transportation, (4) finance, and (5) economic development. Within available appropriations, the director must:

1. appoint, employ, and remove assistants, employees, and personnel needed to efficiently and effectively run the office;
2. develop a plan, presumably before January 1, 2016, to move the maritime functions of the DOT to the authority (see BACKGROUND);

3. review and recommend state policies that affect the ports;
4. coordinate state, regional, and local efforts to encourage the growth of the ports;
5. develop a plan, presumably before making recommendations to the governor and legislature, to eliminate the office and move its functions and those of the Connecticut Maritime Commission to the authority;
6. identify, together with DECD, DOT, and DEEP, qualified candidates for the authority board and executive director;
7. develop a plan on authority bonding powers; and
8. prepare and submit, by January 1, 2016, a report of activities, findings, and recommendations on the authority's establishment to the governor and the Commerce, Transportation, and Environment committees

§§ 11 & 12 — FUEL TAX EXEMPTIONS

The bill exempts from the petroleum products gross earnings tax, bunker fuel oil, intermediate fuel, marine diesel oil, and marine gas oil used in vessels primarily engaged in interstate commerce. The law already exempts these fuels when used in vessels displacing more than 4,000 dead weight tons. It exempts from the motor vehicle fuels tax any fuel sold for use by any vessel either (1) primarily used in interstate commerce or (2) displacing more than 4,000 dead weight tons.

BACKGROUND

Current Port Administration

Independent, locally created port authorities oversee the ports in Bridgeport, New Haven, and New London. No state or regional agency oversees local authority operation, but they operate under state statutes granting them broad powers to plan, finance, develop, and operate facilities in the locally designated port district (CGS §§ 7-329c to 329u). The current districts include privately owned and operated facilities, including docks and shipping terminals. New London's

district includes the DOT-owned and managed state pier.

Connecticut Maritime Commission

By law, the commission, among other things, (1) advises the governor, transportation commissioner, and legislature on state maritime policy and operations; (2) develops and recommends a state maritime policy; (3) supports the development of the state's maritime commerce and industries, including its deep water ports; and (4) supports the development of the ports, including identifying new opportunities for them, analyzing the potential for and encouraging private investment in them, and recommending policies that support port operations. The commission is part of DOT (CGS § 13b-51a).

State Maritime Office

This DOT office is responsible for maritime operations, including the state pier in New London, serves as the governor's principal maritime policy advisor, and staffs the Connecticut Maritime Commission (CGS § 13b-51b).

Administrative Purposes Only

Agencies assigned to departments for administrative purposes only must: (1) exercise any quasi-judicial, rule-making, or regulatory authority, licensing, and policy-making functions which it may have independent of the department and without its approval or control; (2) prepare its budget, if any, and submit its budgetary requests through the department; and (3) hire its own personnel or enter into contracts, if authorized by law, or if the legislature provides or authorizes funds for these purposes (CGS § 4-38f).

Related Bill

sHB5289 (File 245), favorably reported by the Transportation Committee contains substantially the same provisions as this bill.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/25/2014)